

NORTHERN TERRITORY OF AUSTRALIA

CRIMINAL RECORDS (SPENT CONVICTIONS) ACT

As in force at 18 May 2005

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NORTHERN TERRITORY OF AUSTRALIA

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CRIMINAL RECORDS (SPENT CONVICTIONS) ACT

An Act to facilitate the more effective rehabilitation of certain offenders by providing that, in certain circumstances, their criminal records relating to relatively minor offences may be spent and not form part of their criminal history, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Criminal Records (Spent Convictions) Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

conditional pardon means an extension of the prerogative of mercy referred to in section 432 of the Criminal Code upon a condition referred to in that section.

court means:

- (a) the Local Court;
- (b) the Juvenile Court established by section 14 of the *Juvenile Justice Act*;
- (c) the court of summary jurisdiction; or
- (d) the Supreme Court,

and includes a court of the Commonwealth, a State or another Territory of the Commonwealth having similar jurisdiction.

corresponding law or **corresponding provision**, in relation to an Act or a provision of or under an Act of the Territory, means an Act or provision of or under an Act in force in a State or another Territory of the Commonwealth that corresponds as nearly as practicable to the Act or provision of or under the Act of the Territory.

criminal record means a record of:

- (a) a conviction;
- (b) a finding that an offence is proved (and any order in relation to the finding) without the court proceeding to conviction;
- (c) a conviction and the making of an order under section 5 of the *Criminal Law (Conditional Release of Offenders) Act*;
- (d) a finding or order made under section 53 of the *Juvenile Justice Act*;
- (e) a quashed conviction;
- (f) a pardon, including a conditional pardon;
- (g) a charge in respect of which a finding or order referred to in paragraphs (a) to (f), inclusive, is made by a court;
- (h) action taken in respect of a breach of prison discipline committed during a period of imprisonment; or
- (j) disciplinary action taken while a juvenile offender is in a detention centre,

and includes such a record of a conviction, finding, order, quashed conviction, pardon, charge or action in a State or another Territory of the Commonwealth.

detention centre means a juvenile detention centre approved under section 62 of the *Juvenile Justice Act* and includes a detention centre, however described, under a corresponding law.

equivalent offence means an offence against the relevant corresponding provision.

imprisonment includes a period during which a person is subject to a home detention order under Part IVA of the *Criminal Law (Conditional Release of Offenders) Act* or Part 3 of the *Sentencing Act* but does not include:

- (a) detention in a detention centre;

- (b) a sentence of periodic imprisonment referred to in section 53(5) of the *Juvenile Justice Act*; or
- (c) a sentence imposed because of the failure to pay a penalty.

law enforcement agency means:

- (a) the Police Force of the Northern Territory, the Australian Federal Police, or the police force of a State or another Territory of the Commonwealth;
- (b) the Australian Crime Commission;
- (d) the National Exchange of Police Information;
- (e) the Attorney-General for the Territory, the Commonwealth or for a State or another Territory of the Commonwealth;
- (f) persons employed in the Agency primarily responsible for law and the administration of justice, or a similar Department of the Commonwealth, a State or another Territory of the Commonwealth, or employed in a body administered by such a Department, being persons whose primary function is the institution or conduct of proceedings for offences;
- (g) the Office of the Director of Public Prosecutions for the Commonwealth or the Territory, or a similar body established under a law of a State or another Territory of the Commonwealth;
- (h) the Director of Public Prosecutions for the Commonwealth or the Territory, or a person performing a similar function appointed under a law of a State or another Territory of the Commonwealth;
- (j) a Crown Prosecutor;
- (k) a person who, under a law of the Commonwealth, the Territory or a State or another Territory of the Commonwealth, is permitted to practice as a legal practitioner, however described, to the extent to which he or she is engaged by or on behalf of the Crown to prosecute an offence;
- (m) a person performing functions and exercising powers on behalf of an agency, authority, department or statutory body referred to in this definition; or
- (n) a prescribed person or body.

non-traffic offence means an offence other than a traffic offence.

offence means an offence against a law in force in the Territory, the Commonwealth or a State or another Territory of the Commonwealth.

pardon means an extension of the prerogative of mercy referred to in section 431 of the Criminal Code, not being a conditional pardon.

public authority means a public or local authority constituted by or under an Act of the Territory, the Commonwealth or a State or another Territory of the Commonwealth, a government department or a statutory body or agency representing the Crown in any of its capacities, and includes a law enforcement agency and a person performing functions and exercising powers on behalf of the authority, department, statutory body or agency.

quashed conviction means

- (a) a conviction;
- (b) a finding that an offence has been proved, without proceeding to conviction; or
- (c) an order,

that, in accordance with subsection (2), shall be taken to have been quashed.

sexual offence means:

- (a) an offence against Division 2 of Part V of the Criminal Code;
- (b) an offence against section 188(2)(k), 192, 192B or 201 of the Criminal Code;
- (c) an offence prescribed as a sexual offence for the purposes of this section; or
- (d) an offence of:
 - (i) counselling or procuring;
 - (ii) aiding or abetting the commission of;
 - (iii) conspiring to commit;
 - (iv) attempting to commit; or
 - (v) being an accessory after the fact to,

an offence referred to in this definition or an equivalent offence.

spent conviction means a criminal record which is spent in accordance with Part 2.

spent record means:

- (a) a spent conviction;
- (b) a criminal record in respect of:
 - (i) a quashed conviction; or
 - (ii) an offence in respect of which an unconditional pardon has been given;
- (c) a charge not proceeded with; or
- (d) a charge that has been withdrawn.

supervising officer has the same meaning as in the *Prisons (Correctional Services) Act*.

surveillance officer has the same meaning as in the *Prisons (Correctional Services) Act*.

traffic offence means an offence against the *Traffic Act* or the *Traffic Regulations*, or an offence prescribed for the purposes of this definition.

violent offence means an offence involving the use or threat of violence against another person.

- (2) For the purposes of this Act:
- (a) a conviction shall be taken to be quashed if it is quashed or set aside;
 - (b) a finding that an offence has been proved, without proceeding to a conviction, shall be taken to be quashed if it is quashed or set aside (except where it is set aside in order to impose a penalty);
 - (c) a finding that an offence has been proved, (and any order in relation to the finding) without the court proceeding to a conviction, shall be taken to be quashed if the finding is quashed or set aside;
 - (d) a conviction and the making of an order under section 5 of the *Criminal Law (Conditional Release of Offenders) Act* shall be taken to be quashed if the conviction is set aside; and

(e) an order under section 53 of the *Juvenile Justice Act* shall be taken to be quashed if it is quashed or set aside.

(3) In this Act, unless the contrary intention appears, a reference to an Act or a provision of or under an Act of the Territory includes a reference to a corresponding law or corresponding provision, as the case may be.

4 Application

(1) This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

(2) This Act applies to and in relation to offences committed in the Territory, or in a State or another Territory of the Commonwealth, before or after the commencement of this Act.

(3) This Act does not affect the operation of:

(a) sections 14 and 15 of the *Evidence Act*; or

(b) section 90 of the *Juvenile Justice Act*.

Part 2 Spent convictions

5 Interpretation

In this Part ***criminal record*** does not include a criminal record of:

(a) a sexual offence;

(b) an offence by a body corporate; or

(c) a prescribed offence.

6 Convictions may be spent

(1) In this section ***criminal record*** does not include a record of a conviction of an offence in respect of which a sentence of imprisonment for more than 6 months was imposed, whether or not the sentence was suspended.

(2) Subject to this Part, a criminal record is a spent conviction on the expiration of a period, immediately after the date of conviction of the offence, of:

(a) where the offender was convicted in the Juvenile Court within the meaning of the *Juvenile Justice Act* – 5 years; and

- (b) in any other case – 10 years,
during which period the offender has not:
 - (c) been convicted of an offence punishable by imprisonment; or
 - (d) served all or any part of a sentence of imprisonment.
- (2A) If the offender was convicted in a court other than the Juvenile Court (within the meaning of the *Juvenile Justice Act*) for an offence that the offender committed before attaining 18 years of age, his or her criminal record is, subject to this section and section 6A, a spent conviction on the expiration of the period specified in subsection (2)(b).
- (3) A conviction for a subsequent traffic offence and any period of imprisonment served in respect of the offence shall be taken into account in calculating a period referred to in subsection (2) only in respect of a conviction relating to a traffic offence.
 - (4) A conviction for a subsequent non-traffic offence and any period of imprisonment served in respect of the offence shall be taken into account in calculating a period referred to in subsection (2) only in respect of a conviction relating to a non-traffic offence.

6A Spent convictions for offenders under 18 convicted in court other than Juvenile Court

- (1) In this section:

criminal record has the same meaning as in section 6.

offender means a person who was convicted in a court other than the Juvenile Court (within the meaning of the *Juvenile Justice Act*) for an offence the offender committed before attaining the age of 18 years.

- (2) The criminal record of an offender is not a spent conviction unless:
- (a) subject to this section:
 - (i) 5 years has expired since the date of conviction of the offence; and
 - (ii) the offender applies under subsection (3) for the conviction to be a spent conviction and is given notification under subsection (6) that the conviction is a spent conviction; or

- (b) subject to section 6, the period specified in section 6(2)(b) has expired.
- (3) After the expiry of 5 years after the date an offender is convicted of an offence, the offender may apply to the Commissioner of Police for the conviction to be a spent conviction.
- (4) On receipt of the application, the Commissioner must conduct an inquiry to ascertain whether 5 years during which the offender has not:
 - (a) been convicted of an offence punishable by imprisonment; or
 - (b) served all or any part of a sentence of imprisonment,has expired since the date of the offender's conviction.
- (5) In ascertaining whether the 5 year period has expired:
 - (a) a conviction for a subsequent traffic offence and any period of imprisonment served in respect of the offence is taken into account in calculating the 5 year period only in respect of a conviction relating to a traffic offence; and
 - (b) a conviction for a subsequent non-traffic offence and any period of imprisonment served in respect of the offence is taken into account in calculating the 5 year period only in respect of a conviction relating to a non-traffic offence.
- (6) If the 5 year period has expired in accordance with subsections (4) and (5), the conviction is a spent conviction and the Commissioner must give written notice to the offender accordingly.

7 Where court does not record or proceed to conviction

- (1) Where a person has been convicted of an offence but a court, without recording the conviction, discharges the person absolutely, the criminal record (if any) of the conviction is a spent conviction immediately the person is discharged.
- (2) Subject to subsections (3) and (4), a criminal record in respect of a finding that an offence is proved without the court proceeding to conviction is a spent conviction immediately the finding or order is made.
- (3) A criminal record of a finding or order made under section 53 of the *Juvenile Justice Act*, not being an order made under subsection (1)(a) of that section, without the court proceeding to conviction, is a spent conviction immediately the period specified in the order expires if the person subject to it has by that time

complied with all of its requirements or where, before that time, he or she has complied with all of its requirements and there is no continuing obligation to be met, on the completion of those requirements.

- (4) Where a court finds an offence proved and, without proceeding to conviction, makes an order under section 4 of the *Criminal Law (Conditional Release of Offenders) Act* or section 10 or 11 of the *Sentencing Act*, the criminal record of that offence is a spent conviction immediately the period specified in the order expires if the person subject to it has by that time complied with all its requirements or where, before that time, he or she has complied with all of its requirements and there is no continuing obligation to be met, on the completion of those requirements.

8 Repealed provisions

A criminal record in respect of an offence against a provision of an Act is a spent conviction immediately the provision is repealed, except where:

- (a) a provision in an Act enacted in the jurisdiction before or in substitution for the first-mentioned provision, substantially of the same effect, is in force; or
- (b) the provision in respect of the offence, or a record of the offence, is prescribed for the purposes of this section.

9 Conditional pardons

A criminal record of a conditional pardon is a spent conviction immediately the conditions to which it is subject are complied with.

10 Revival of convictions which are spent convictions

- (1) The criminal record of a conviction of a person in respect of a non-traffic offence ceases to be a spent conviction on the conviction of the person of a non-traffic offence punishable by imprisonment, and this Act then applies as if the criminal record had never been a spent conviction.
- (2) The criminal record of a conviction of a person in respect of a traffic offence ceases to be a spent conviction on the conviction of the person of a traffic offence punishable by imprisonment, and this Act then applies as if the criminal record had never been a spent conviction.

Part 3 Effect of spent records

Division 1 Disclosure of records

11 Person not required to disclose spent record

Subject to this Part, where a record is a spent record:

- (a) the person to whom it relates is not required to disclose to another person that spent record;
- (b) a question concerning a person's convictions, criminal history or criminal record or a record of a similar kind shall be taken to refer only to a record which is not a spent record; and
- (c) in the application to a person of a provision of an Act or instrument of a legislative or administrative character:
 - (i) a reference to a conviction, criminal history or criminal record or record of a similar kind shall be taken to be a reference only to a record which is not a spent record; and
 - (ii) a reference to a person's character or fitness shall not be taken as permitting or requiring a spent record to be taken into account.

12 Unlawful disclosure of spent record

- (1) A person with access to records kept by or on behalf of a public authority which include spent records who, other than in accordance with this Part, discloses a spent record or information relating to a spent record to a person without the consent of the person to whom the record relates, is guilty of an offence.

Penalty: \$5,000 or imprisonment for 6 months.

- (2) A person who knows, or should reasonably be expected to know, that a record is a spent record and who, other than in accordance with this Part, discloses the spent record or information relating to the spent record without the consent of the person to whom that spent record relates, is guilty of an offence.

Penalty: \$5,000.

- (3) The Commissioner of Police may disclose a spent conviction to a law enforcement agency, to the holder of a prescribed office or to a prescribed person for the purpose of the prosecution of an offence or the making of submissions on sentencing in respect of an offence.

- (4) A law enforcement agency may disclose a spent conviction to another law enforcement agency for the purpose of a criminal investigation, the prosecution of an offence or the making of submissions on sentencing in respect of an offence.
- (5) A law enforcement agency, where required to do so by, or in the course of a proceeding before, a court, may disclose a spent conviction to the court, but a court shall not require such a disclosure or permit publication of any information so disclosed unless it is of the opinion that the interests of justice in the particular circumstances require the disclosure and/or publication.
- (6) A person employed by or working for an archive or a library may make available to a member of the public, or to an officer of another archive or library, in accordance with the normal procedures of the first-mentioned archive or library, material that is normally available for public scrutiny which contains information relating to a spent record.

13 Spent records not to be taken into account for unauthorised purpose

A person who takes into account a spent record for a purpose not authorised by or under an Act is guilty of an offence.

Penalty: \$5,000.

14 Unlawfully obtaining information

A person who fraudulently or dishonestly obtains or attempts to obtain information in respect of a spent record kept by or on behalf of a public authority is guilty of an offence.

Penalty: \$5,000 or imprisonment for 6 months.

Division 2 Exclusions

15 Exclusions in relation to spent convictions

Sections 11 and 13 do not apply in respect of a spent conviction:

- (a) in relation to an application for appointment to or employment as a Judge, magistrate, justice of the peace, member of the Police Force, prison officer, parole officer, probation officer, supervising officer or surveillance officer;
- (c) for arson or attempted arson in relation to an application by the person to whom the spent conviction relates to be appointed to or employed in or otherwise engaged in fire fighting or fire prevention;

- (d) relating to a violent offence, to a request by a public authority for information about the conviction where the information is sought for the purpose of determining whether to grant, reissue or revoke a licence, permit or registration under the *Firearms Act*;
- (e) in relation to the consideration of the suitability of a person to be a juror;
- (f) to or in relation to proceedings before a court (or investigations for the purpose of such proceedings or determining whether proceedings should be commenced), including the giving of evidence or the conduct of the case before, or the making of a decision (including a decision concerning sentencing) by, the court, but where a disclosure of a spent conviction is made to the court the court shall not permit the publication of any information so disclosed unless it is of the opinion that the interests of justice in the particular circumstances require its publication; or
- (g) relating to a disqualifying offence within the meaning of section 24(3) of the *Prostitution Regulation Act* or an attempt to commit such an offence, in respect of an application for an operator's licence or a manager's licence under that Act.

15A Exclusion in relation to spent records

- (1) Sections 11 and 13 do not apply in respect of a spent record in relation to an application for appointment or employment to do work principally involving the care, instruction or supervision of vulnerable persons.

- (2) In subsection (1):

spent record includes:

- (a) a finding that an offence has not been proved; and
- (b) a charge that is pending.

vulnerable persons includes children, aged persons and persons with a physical or intellectual disability or mental illness.

Part 4 Miscellaneous**16 Act does not authorise contravention of other laws**

Nothing in this Act authorises a person to disclose a charge, finding, order or conviction, or to take a charge, finding, order or conviction into account, if to do so would contravene any other law in force in the Territory.

17 Act does not affect certain other lawful acts

Nothing in this Act affects anything lawfully done before a matter to which this Act applies becomes, or becomes the subject of, a spent record.

18 Destruction of records

This Act does not authorise the destruction by or on behalf of a public authority of a spent record.

19 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Regulations may provide that this Act or a provision of this Act does not affect another Act or a provision of another Act, whether enacted before or after the commencement of this Act and, on a regulation being so made, this Act shall be construed accordingly.

(3) The Regulations may provide that a provision of this Act does not apply to or in relation to:

- (a) a specific record or part of a record or information relating to that record;
- (b) a specified person or class of persons; and/or
- (c) specified circumstances,

and on a regulation being so made this Act shall be construed accordingly.

- (4) Without limiting the Administrator's power under this section, the Minister shall, in the fifth year after regulations referred to in subsection (3) are made and in each succeeding fifth year thereafter while any such regulations remain in force, review the regulations for the purpose of deciding whether the Administrator should be advised to repeal or amend the regulations.

ENDNOTES

1

KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2

LIST OF LEGISLATION***Criminal Records (Spent Convictions) Act 1992 (Act No. 76, 1992)***

Assent date 14 December 1992
 Commenced 29 March 1993 (*Gaz* G12, 24 March 1993, p 3)

Criminal Records (Spent Convictions) Amendment Act 1993 (Act No. 35, 1993)

Assent date 14 September 1993
 Commenced 14 September 1993

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995
 and *Gaz* S15, 13 June 1996)

Statute Law Revision Act 1996 (Act No. 42, 1996)

Assent date 17 September 1996
 Commenced 17 September 1996

Criminal Records (Spent Convictions) Amendment Act 1998 (Act No. 8, 1998)

Assent date 25 March 1998
 Commenced 22 April 1998 (*Gaz* G15, 22 April 1998, p 4)

Criminal Records (Spent Convictions) Amendment Act 2002 (Act No. 26, 2002)

Assent date 5 July 2002
 Commenced 31 July 2002 (*Gaz* G30, 31 July 2002, p 3)

Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)

Assent date 7 November 2002
 Commenced 7 November 2002

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)

Assent date 15 September 2004
Commenced 27 October 2004 (*Gaz G43*, 27 October 2004, p 3)

Australian Crime Commission (Consequential Amendments) Act 2005 (Act No. 7, 2005)

Assent date 17 March 2005
Commenced 18 May 2005 (s 2, s 2 *Australian Crime Commission Act 2005* (Act No. 6, 2005) and *Gaz G20*, 18 May 2005, p 2)

3 LIST OF AMENDMENTS

s 3 amd No. 17, 1996, s 6; No. 42, 1996, s 6; No. 8, 1998, s 4; No. 59, 2002, s 5;
No. 54, 2004, s 7; No. 7, 2005, s 3
s 6 amd No. 26, 2002, s 4
s 6A ins No. 26, 2002, s 5
s 7 amd No. 17, 1996, s 6
s 12 amd No. 35, 1993, s 2
s 13 amd No. 1, 2004, s 26
s 15 amd No. 8, 1998, s 5; No. 1, 2004, s 27
s 15A ins No. 1, 2004, s 28